

Reserved On : 17/02/2026
Pronounced On : 03/03/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 80 of 2023

With
R/SECOND APPEAL NO. 81 of 2023
With
R/SECOND APPEAL NO. 411 of 2023
With
R/SECOND APPEAL NO. 412 of 2023
With
R/SECOND APPEAL NO. 413 of 2023
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R/SECOND APPEAL NO. 432 of 2023
 With
R/SECOND APPEAL NO. 433 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No

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DHARMENDRA VALLABHBHAI RAMANI
 Versus
 JETPUR SWAMINARAYAN TRUST & ANR.

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Appearance:

MR HP BAXI(9459) for the Appellants

MR MRUGEN K PUROHIT(1224) for the Respondent No. 1

NOTICE SERVED for the Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI

CAV JUDGMENT

1. The present captioned Second Appeals have been preferred under Section 100 of the Code of Civil Procedure, 1908 (for short, “*the Code*”). The appeals arise out of identical and symmetrical facts and emanate from a common judgment and order passed by the learned First Appellate Court in a series of First Appeals.

2. In view of the commonality of issues involved and the similarity of the factual matrix, this Court proposes to adjudicate all the aforesaid Second Appeals by this common judgment and order,

so as to avoid repetition and ensure consistency in judicial determination.

FACTUAL BACKGROUND:-

3. Since the factual backdrop in all the appeals is analogous, as per report, Second Appeal No. 80 of 2023 is treated as the lead matter, and the facts are being referred to therefrom for the sake of convenience. The relevant facts, shorn of unnecessary details, are as under:—

3.1. The appellants herein, who were the original petitioners before the Court below, instituted an application for fixation of standard rent under Section 11(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, “*the Rent Act*”), against the landlord, namely Shri Jetpur Swaminarayan Trust, a public trust duly registered under the Gujarat Public Trusts Act.

3.1. The subject premises comprise multiple shops constructed upon non-agricultural land bearing Revenue Survey No. 698 paiki. The said shops were constructed by the Trust and let out to various tenants subsequent to the year 2001.

3.2. In the year 2019, the landlord issued a notice to the appellants seeking permitted increase in rent and terminating the tenancy. Within one month of receipt of the said notice, the appellants, asserting their status as tenants, preferred an

application under Section 11(3) of the Rent Act for fixation of standard rent.

3.3. In the said proceedings, the landlord entered appearance and filed an application under Order VII Rule 11 of the Code, seeking rejection of the plaint. The said application was premised upon the decision of the Hon'ble Supreme Court in **Malpe Vishwanath Acharya & Ors. v. State of Maharashtra & Ors., (1998) 2 GLR 1364**, wherein certain provisions relating to standard rent were analyzed and observed unconstitutional. Relying upon the ratio of the said decision, it was contended that the remedy under Section 11 of the Rent Act had become otiose and unenforceable and, therefore, the application for fixation of standard rent under Section 11(3) of the Rent Act was not maintainable in law.

3.4. The learned Trial Court accepted the contention raised on behalf of the landlord and held that the application under Section 11(3) of the Rent Act was not maintainable and amounted to an abuse of the process of law. Consequently, the plaint came to be rejected under Order VII Rule 11 of the Code.

3.5. Being aggrieved and dissatisfied with the said order, the tenants preferred Regular Civil Appeals. The learned 6th Additional District Judge, Jetpur at Rajkot, by a common judgment and order dated 18.06.2022, dismissed all the First Appeals and confirmed the order rejecting the plaint.

3.6. It is against the aforesaid concurrent findings that the present Second Appeals have been preferred at the instance of the tenants. Except Second Appeal No. 80 of 2023, Second Appeal No. 81 of 2023, all the other connected appeals were admitted by a Coordinate Bench of this Court upon formulation of the following solitary substantial question of law:—

“1. Whether the Appellant proves that application filed for fixation of Standard Rent not falls within purview of Order 7 Rule 11 of C.P.C.?”

4. Heard learned advocate Mr. H. P. Baxi appearing for the appellant–tenant and learned advocate Mr. Mrugen Purohit appearing for the respondent–landlord.

SUBMISSIONS OF THE APPELLANTS:-

5. The submissions canvassed by learned advocate Mr. Baxi, in support of admission and eventual allowance of the present Second Appeals, may be summarised thus: it is contended that the Courts below have committed a manifest error of law in treating the application preferred under Section 11(3) of the Rent Act as a “plaint” and, on that premise, invoking the powers under Order VII Rule 11 of the Code for its rejection. According to the learned advocate for the appellant Mr. Baxi, such an approach is fundamentally misconceived and legally untenable.

5.1. It is further submitted that, in terms of Order VI of the Code, “pleadings” are confined to a plaint or a written statement. An

application for fixation of standard rent under Section 11(3) of the Rent Act does not partake the character of either a plaint or a written statement and, therefore, falls outside the ambit of Order VII Rule 11 of the Code. Consequently, the rejection of such an application by resorting to the provisions governing rejection of a plaint is stated to be *ex facie* without jurisdiction.

5.2. To fortify the aforesaid submission, reliance has been placed upon the decision of a Coordinate Bench of this Court in **Navdip Education Trust v. LRs of Bhagwanbhai Jesingbhai Patel, Civil Revision Application No. 199 of 2021** and allied matters, as well as the judgment rendered by the Telangana High Court in case of **Ashok Kumar Agarwal v. B. Balraj Goud and Others** in **Civil Revision Petition Nos. 766 and 842 of 2017** and allied matters.

5.3. It is also urged that both the learned Trial Court and the learned First Appellate Court have committed a grave error in accepting the contention of the landlord that the provisions of the Rent Act are inapplicable to tenancies created subsequent to the year 2001, without undertaking a proper examination of the statutory framework and the governing legal position.

5.4. It is further contended that the learned Courts below have fallen into a patent error in proceeding on the premise that the Hon'ble Supreme Court has declared the very concept of "standard rent" to be unconstitutional. According to learned advocate Mr. Baxi, such a reading of the decision in **Malpe Vishwanath Acharya**

(supra) is wholly misconceived. Though certain observations were made therein with regard to the unreasonableness of freezing rents at historical levels, the Hon'ble Supreme Court did not efface the statutory concept of standard rent from the statute book; rather, it left the matter to the legislative wisdom of the State Government. Therefore, to hold that the principle of standard rent stands declared unconstitutional is, according to the learned advocate, a clear misreading and misapplication of the ratio of the said judgment.

5.5. It is further urged that the landlord having issued a notice seeking enhancement of contractual rent and termination of tenancy, such action itself falls squarely within the statutory framework of the Rent Act. The issuance of such notice, according to the appellant, furnishes a legitimate cause of action to the tenant to invoke Section 11(3) of the Rent Act for fixation of standard rent. Thus, the tenant's application is a statutory remedy triggered by the landlord's own action and cannot be characterised as an abuse of process.

5.6. Reliance is placed upon the decision of the Hon'ble Supreme Court in **Laxman Jiwaba Baherwade v. Bapurao Dodappa Tandale, AIR 2002 SC 3266**, wherein the standard rent came to be determined even in the year 2002. It is, therefore, submitted that it cannot be contended that the Rent Act or the provisions pertaining to standard rent have become otiose or inapplicable post-2001.

5.7. On the strength of the aforesaid submissions, learned advocate

Mr. Baxi has urged that the impugned judgments and orders passed by the Courts below suffer from substantial errors of law, giving rise to substantial questions within the meaning of Section 100 of the Code, and therefore deserve to be quashed and set aside by allowing the present Second Appeals.

SUBMISSIONS OF THE RESPONDENTS:-

6. *Per contra*, learned advocate Mr. Mrugen Purohit appearing for the respondent–landlord has vehemently opposed the present appeals. He submitted that it is an admitted position on record that the subject premises were let out in the years 2011–2012. By virtue of the statutory amendments and the notification issued by the State Government, the operation of the Rent Act, insofar as newly constructed premises are concerned, stood excluded for the relevant period commencing from the year 2001 onwards.

6.1. It is contended that both the learned Trial Court and the learned First Appellate Court have meticulously referred to and relied upon the notification issued by the State Government suspending the applicability of the Rent Act to such premises. In light of the said statutory position, it is submitted that when the appellants sought to invoke Section 11(3) of the Rent Act, the very provision itself was inapplicable and unavailable to them in law.

6.2. According to the learned advocate, the application for fixation of standard rent was thus wholly misconceived and untenable,

amounting to an abuse of the process of the Court and a futile exercise in litigation. The learned Courts below, therefore, rightly exercised their jurisdiction in rejecting the proceedings at the threshold, thereby nipping the untenable claim in the bud.

6.3. The second limb of the submissions advanced by learned advocate Mr. Purohit pertains to the maintainability of the present proceedings. It is contended that the appellants consciously invoked the remedy under Section 11(3) of the Rent Act by filing an application for fixation of standard rent. In terms of Section 29(3) of the Act, an appeal against such an order rejecting standard rent application since treated as decree lies before the District Court. However, the statute does not contemplate or provide for a further Second Appeal. The only remedy available thereafter is a Civil Revision under Section 29(2) of the Act.

6.4. It is, therefore, submitted that the present Second Appeals, having been preferred under Section 100 of the Code, are *per se* not maintainable before this Court and are liable to be rejected at the threshold for want of statutory jurisdiction.

6.5. Lastly, learned advocate Mr. Purohit has invited attention to Section 141 of the Code, which provides that the procedure prescribed in the Code in regard to suits shall be followed, as far as may be, in all proceedings in any Court of civil jurisdiction. It is contended that the proceedings under Section 11(3) of the Rent Act, though styled as an “application,” are in substance adversarial in

character, wherein the applicant asserts a substantive civil right seeking determination of standard rent on the premise that the rent demanded by the landlord is excessive and exorbitant.

6.6. According to the learned advocate, once the applicant sets in motion a lis seeking adjudication of civil rights and such claim is contested by the opposite party, the proceedings assume the trappings of a suit. Merely because the nomenclature employed is that of an “application” or “petition,” the essential character of the proceedings does not stand diluted, as decision in plea of standard rent is summary in nature and diluted in short span compared to regular suit proceedings. The Legislature has through to give form of application or pension, however, in effect and substance, it partakes the character of a plaint within the meaning of Order VI of the Code.

6.7. On this premise, it is submitted that an application under Section 11(3) of the Rent Act for fixation of standard rent squarely falls within the ambit of “pleadings” and is amenable to the provisions of Order VII Rule 11 of the Code.

6.8. Learned advocate Mr. Purohit has placed reliance upon the decision of a Coordinate Bench of this Court rendered in **Special Civil Application No. 28867 of 2007 in the case of Pujya Shree Ranchhodji Maharaj Kelavni and Sanskrutik Mandal v. Shree Karshanji Zinabhai Brahmashatriya Vidyarthi.** He then submitted that the Coordinate Bench, while considering the ratio of the

judgment of the Hon'ble Supreme Court in **Malpe Vishwanath Acharya (supra)**, observed that once the constitutional validity or sanctity of a statutory provision is successfully assailed and it is held to be *ultra vires* the Constitution, such provision is liable to be treated as though it never existed on the statute book.

6.9. Building upon the aforesaid proposition, learned advocate Mr. Purohit contended that since the Hon'ble Supreme Court has seriously impugned the constitutional validity of the principle underlying standard rent, any subsequent extension or invocation of the Rent Act would not resurrect or revitalize a provision which stands rendered otiose. According to him, once the foundation of the concept of standard rent has been judicially eroded, the same cannot be pressed into service by the tenant under the guise of Section 11(3) of the Rent Act.

6.10. In this backdrop, it is submitted that the learned Courts below have committed no error in rejecting the plaint at the threshold. It is further urged that this Court, while exercising its limited jurisdiction under Section 100 of the Code, ought not to interfere in the absence of any substantial question of law, and the present Second Appeals deserve to be dismissed in *limine*.

FINDINGS, ANALYSIS AND CONCLUSION OF THE COURT:-

7. Having heard the learned advocates for the respective parties

at length and having perused the impugned orders with due circumspection, the matter is required to be examined in the aforesaid legal perspective.

7.1. At the outset, it would be apposite to advert to the decision of the Hon'ble Supreme Court in ***Jaichand (Dead) through LRs and Another v. Sahnulal and Another***, reported in ***2024 SCC OnLine SC 3864***, wherein the scope and contours of the jurisdiction exercisable under Section 100 of the Code have been succinctly delineated. The Hon'ble Apex Court, while elucidating the limited ambit of interference in a Second Appeal, has observed as under:—

“28. It is thus clear that under Section 100 CPC, the High Court cannot interfere with the findings of fact arrived at by the first Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.”

7.2. In the backdrop of the aforesaid legal position, the rival submissions advanced before the Courts below are required to be examined in the context of the substantial questions of law framed at the time of admission of the present Second Appeals (save and except Second Appeal Nos. 80 of 2023 and 81 of 2023).

7.3. It is noticeable that while admitting the appeals, the Coordinate Bench cast the burden upon the appellants to demonstrate that an application filed for fixation of standard rent

under Section 11(3) of the Rent Act does not fall within the ambit of Order VII Rule 11 of the Code.

7.3. In an endeavour to discharge the said burden, learned advocate Mr. Baxi placed reliance upon the provisions of Order VI of the Code and contended that since a petition under Section 11(3) of the Rent Act for fixation of standard rent does not answer the description of a “plaint,” the provisions of Order VII Rule 11 would have no application thereto.

7.4. However, while advancing the aforesaid submission, learned advocate Mr. Baxi did not advert to or reconcile the import of Section 141 of the Code, which extends the procedural framework governing suits to other proceedings of a civil nature. The said provision, being germane to the controversy at hand, reads as under:—

“141. Miscellaneous proceedings .-

The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

[Explanation .-In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under article 226 of the Constitution.]”

8. Section 141 of the Code extends the procedural framework prescribed for suits to miscellaneous proceedings and to other civil proceedings not otherwise specifically governed by the Code. The sweep of Section 141 is confined to matters of procedure alone; it

does not incorporate or import the substantive provisions of the Code into such proceedings. In other words, it is the procedural apparatus of the Code that stands attracted by virtue of Section 141, and not the substantive rights or liabilities created thereunder.

8.1. In this context, it would be apposite to advert to the definition of “*pleading*” as expounded in Black’s Law Dictionary, Ninth Edition, which reads as under:—

“A formal document in which a party to a legal proceeding (esp. a civil lawsuit) sets forth or responds to allegations, claims, denials, or defenses.”

8.2. In its general sense, the proceedings from the statement of claim to issue joined i.e. the opposing statements of the parties 2. Any part of these proceedings.

8.3. A formal written (formerly oral) statement in a civil action prepared by each side and setting out the cause of action or the defence.

8.4. Thus, a “*pleading*” is understood to mean a formal statement filed by a party to judicial proceedings, wherein such party sets forth the material facts constituting its claim or defence, with a view to inviting an adjudication by the Court upon the issues so raised. It embodies either the assertion of a right seeking judicial determination or a response thereto by way of denial, traverse, or defence.

8.5. At this juncture, it would be apposite to advert to the text and tenor of Section 11(3) of the Rent Act, which reads as under:—

“Section 11(3) in The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947

(3) If any application for fixing the standard rent or for determining the permitted increase is made by a tenant who has received a notice from his landlord under sub-section (2) of Section 12, the Court shall make an order directing the tenant to deposit in Court forthwith and thereafter monthly or periodically, such amount of rent or permitted increases as the Court considers to be reasonably due to the landlord pending the final decision of the application. A copy of such order shall be served upon the landlord. Out of the amount so deposited the Court may make order for the payment of such reasonable sum to the landlord towards payment of rent or increase due to him, as it thinks fit. If the tenant fails to deposit such amount, this application shall be dismissed.”

9. A plain reading of Section 11(3) of the Rent Act indicates that it contemplates an application to be preferred by a tenant for fixation of standard rent or for determination of permitted increases, particularly in a case where the tenant has received a notice under sub-section (2) of Section 12 of the Act.

9.1. The provision employs the expression “cause considered to be reasonably due to the landlord,” which unmistakably postulates an adjudicatory exercise by the Court. The Court is required to evaluate the rival assertions, those advanced by the tenant and those controverted by the landlord and relevant market value of rented premises along with market rent, other surrounding property fetched and thereafter arrive at a judicial determination after

analyzing the competing evidence as to whether the amount claimed is reasonably due. Such an exercise is neither ministerial nor summary in nature; it entails a full-fledged consideration of contested civil rights deciding the rival claims.

9.2. Therefore, notwithstanding the nomenclature of the proceeding as an “application,” it, in substance and effect, adjudicates adversarial rights between the parties. The determination rendered under Section 11(3) of the Rent Act has a direct and significant bearing upon the fate of any suit for ejectment instituted by the landlord against the tenant, particularly when the ground of arrears is issue in *seisin*.

9.3. In these circumstances, the submission advanced by learned advocate Mr. Baxi that an application for fixation of standard rent under Section 11(3) of the Rent Act does not partake the character of a pleading is hallow and worthless and thus, cannot be accepted. The decisions relied upon by the learned advocate do not advance the case of the appellants and are of no avail in the peculiar facts and legal matrix of the present matter.

10. Insofar as the decision in **Navdip Education Trust (supra)** is concerned, the issue before the Coordinate Bench was whether an application seeking leave to appeal could be construed as a “plaint” within the meaning of the Code. Upon examining the nature and scope of such an application, the Coordinate Bench held that an application for leave to appeal does not fall within the ambit of a

plaint. The ratio of the said decision was rendered in the peculiar context of leave proceedings and cannot be mechanically extended to the controversy at hand.

11. Similarly, in **Ashok Kumar Agarwal (supra)** before the Telangana High Court, the question that arose for consideration was whether an interlocutory application filed within the framework of a pending suit could be treated as a plaint. The High Court answered the said question in the negative, having regard to the limited and ancillary nature of interlocutory proceedings.

12. Both the aforesaid authorities, therefore, turn upon their own distinct factual and legal matrices and do not have any determinative bearing on the present case, where the application under Section 11(3) of the Rent Act initiates an independent adjudicatory process affecting substantive civil rights.

13. Before the learned Trial Court, it was specifically contended on behalf of the landlord that the concept of standard rent had already been subjected to constitutional scrutiny and its sanctity successfully assailed in view of the pronouncement of the Hon'ble Supreme Court in **Malpe Vishwanath Acharya (supra)**. In that context, the learned Trial Court adverted to the judgment of a Coordinate Bench of this Court in **Puiya Shree Ranchhodji Maharaj Kelavni (supra)**, wherein, in paragraphs 11, 12 and 13, relevant findings were recorded. The observations read as under:—

“11. After referring to various decisions on the point, the said principle was applied to the legislation in question and the observations made in Paragraphs-30, 31 and 32 made. The judgment was rendered on 19.12.1997. From the above observations, it is crystal clear that from the date of the pronouncement, the law i.e. Sections 5, 11 and 12 lost its sanctity. Although in light of the fact that new legislation was in contemplation in the State of Maharashtra on the same subject, the Hon'ble Supreme Court refrained from striking down the provisions, yet they were declared as unreasonable and arbitrary. It was, therefore, eloquent that such provisions were not meant to be applied after the pronouncement even if they remained on statute book for the reasons recorded by the Hon'ble Supreme Court. Unfortunately, this legal position was not brought to the notice of the Courts below and consequently the impugned judgments were rendered. It is true that in ignorance of the pronouncement, if the decision rendered by the Courts below are tested, there is no jurisdictional error requiring interference of this Court under Article 227 of the Constitution of India. However, the fact remains that as on 19.12.1997 i.e. the date of pronouncement of the above judgment, the application under Section 5 of the Bombay Rent Act, if pending at any stage, was not maintainable, and therefore, an application for standard rent could have been dismissed at the threshold. Since this Court has noticed the above decision, it can as well be dismissed under Article 227 of the Constitution of India.

12. The learned counsel for the petitioner, however, contended that the pronouncement was only in the context of the fact that the new legislation was sought to be brought by the State of Maharashtra. This Court is unable to accept the said contention for the simple reason that the Bombay Rent Act with the same provisions was adopted by the State of Gujarat and therefore, any pronouncement made by the Apex Court will be binding on the Courts exercising jurisdiction under the Bombay Rent Act. The Hon'ble Supreme Court was concerned with reasonableness of the said provisions and not with the fact as to whether in comparison to the contemplated legislation, the provisions

were reasonable or not? Therefore, the pronouncement applies in the rent matters in the State of Gujarat with equal force.

13. It is settled law that once the sanctity of law is successfully questioned on it being ultra-vires to constitutional provisions, the provisions are to be treated as if they are not in existence on the statute book.”

14. The learned First Appellate Court has, in paragraph 9 of its judgment, extracted and reproduced the material observations from the decision of the Hon’ble Supreme Court in Malpe Vishwanath Acharya (supra), which are germane to the controversy involved in the present case. The said findings, as reproduced by the learned Appellate Court, read as under:—

“9. It is pertinent to refer to the relevant paragraphs of the judgment in case of Malpe Vishwanath Acharya (supra) of the Hon’ble Supreme Court;

"8. There is considerable judicial authority in support of the submission of learned counsel for the appellants that with the passage of time a legislation which was justified when enacted may become arbitrary and unreasonable with the change in circumstances. In the State of Madhya Pradesh v. Bhopal Sugar Industries, MANU/SC/0099/1964 dealing with a question whether geographical classification due to historical reasons would be valid this Court at page 853 observed as follows :

"Differential treatment arising out of the application of th/e laws so continued in different regions of the same reorganised, State, did not therefore immediately attract the clause of the Constitution prohibiting discrimination. But by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical

reason may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to assume permanency, so as to perpetuate that treatment without a rational basis to support it after the initial expediency and necessity have disappeared.

31. Taking all the facts and circumstances into consideration, we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable. The said provisions would have been struck down as having now become unreasonable and arbitrary but we think it is not necessary to strike down the same in view of the fact that the present extended period of the Bombay Rent Act comes to an end on 31st March, 1998. The government's thinking reflected in various documents itself shows that the existing provisions have now become unreasonable and therefore, require reconsideration. The new bill is under consideration and we leave it to the Legislature to frame a just and fair law keeping in view the interests of all concerned and in particular the resolution of the State Ministers for Housing of 1992 and the National Model Law which has been circulated by the Central Government in 1992. We are not expressing any opinion on the provisions of the said Model law but as the same has been drafted and circulated amongst all the States after due deliberation and thought, there will, perhaps, have to be very good and compelling reasons in departing from the said Model law. Mr. Nargolkar assured us that this Model law will be taken into consideration in the framing of the proposed new Rent Control Act.

32. We, accordingly, dispose of these appeals, without granting any immediate relief but we hold that the decision of the High Court upholding the validity of the impugned provisions relating to standard rent was not correct. We, however, refrain from striking down the said provisions as the existing Act elapses on 31. 3. 1998 and we hope that a new Rent Control Act will be enacted with effect from 1st April, 1998 keeping in view the observations made in this

judgment in so far as fixation of standard rent is concerned. **It is, however, made clear that any further extension of the existing provisions without bringing them in line with the views expressed in this judgment, would be invalid as being arbitrary and violative of Article 14 of the Constitution and, therefore, of no consequence. The respondents will pay the costs.**”

15. The Hon’ble Supreme Court in **Malpe Vishwanath Acharya (supra)**, in the concluding portion of paragraph 32, clarified that any further extension of the impugned provisions, without suitably amending them in conformity with the constitutional principles enunciated in the judgment, would render such provisions vulnerable as being arbitrary and violative of Article 14 of the Constitution of India. The Court observed that any such continuation would be devoid of legal efficacy.

16. In view of the aforesaid pronouncement, although the concept of standard rent continued to remain on the statute book, its enforceability stood substantially eclipsed, inasmuch as any unamended continuation would fall foul of Article 14 of the Constitution. The learned Courts below, therefore, proceeded on the footing that the principle of standard rent, in its unamended form, had become constitutionally untenable.

17. As regards the reliance placed by learned advocate Mr. Baxi upon the decision in **Laxman Jiwaba Baherwade (supra)**, the same is clearly distinguishable on facts. That case arose under the erstwhile regime of the Rent Act when its provisions were fully

operational. The tenancy therein had been created as far back as the year 1963, and it was in that factual milieu that the Hon'ble Supreme Court, in the year 2002, adjudicated upon the issue of fixation of standard rent. I am at loss to understand how such decision and ratio therein helps the case of the appellants. Referring such decision, finds complete insipid approach. The said decision cannot be pressed into service in a case where the tenancy itself commenced much later, in a materially altered statutory landscape.

18. In the present case, it is an undisputed position that the tenancy commenced in the years 2011–2012 and that the premises in question were constructed subsequent to the year 2001. Both the learned Trial Court as well as the learned First Appellate Court have adverted to Section 4 of the Rent Act, as amended, in order to hold that the provisions of the Rent Act were not applicable to the premises in question.

19. The relevant observations of the learned Appellate Court, while re-quoting Section 4 of the Rent Act, read as under:—

“Thus, by virtue of this pleading and argument, the Gujarat Rents, Hotel and Lodging house Rates Control Act, 1947 would not be applicable and all the applications of the fixation of standard rent would be barred by law in view of the Gujarat Amendment Act, 2001.

It would be pertinent to quote the Section 4 of the Act, 1947;

“4. Exemptions

(1) This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy or other like relationship created by a grant from the Government in respect of premises taken on lease or requisitioned by the Government but it shall apply in respect of premises let to the Government or a local authority (1A) This Act shall not apply to-

(a) any premises constructed on or after the commencement of the Bombay Rents, Hotel and Loaging House Rates Control (Gujarat 2001 Second Amendment) Act, (hereinafter referred to as "the amending Act);

(b) any existing premises which self-occupied by the owner or vacant on or after the commencement of the amending Act, and is let after such commencement for a period of ten years from the date of the commencement of the amending Act.

Explanation.-For the purpose of this section, "existing premises" means any premises which exists on the date of the commencement of the amending Act."

(2) The State Government may, by a notification in the Official Gazette direct that all or any of the provisions of this Act shall not, subject to such conditions and terms, as may specify, apply;

(a) generally-

(i) to premises used for a public purpose of a charitable nature or to any class of premises used for such purpose.

(ii) to premises held by a public trust for a religious or charitable purpose;

(iii) to premises held by & public trust for a religious or charitable purpose and administered by a local authority, or

(iv) to premises vested by or under the Charitable Endowment Act, 1890 (VI of 1890) in the treasurer of Charitable Endowments for India or for any State, or

(v) to premises constructed or purchased out of Public Trust Administration Fund established under Section 57 of the Bombay Public Trust Act, 1950 (Bom. XXIX of 1950) and vesting in the Charity Commissioner, or

(b) for special reasons to be recorded, to any particular premises of the nature referred to in sub-clauses (i), (ii), (iii) of Clause (a) Explanation:- or the purpose of this section "public trust "means a Public Trust registered or deemed to be registered under Bombay Public Trusts Act, 1950 (Bom.XXIX of 1950), or a wakfs registered or deemed to be registered under Muslim wake Act, 1954 (XXXIX of 1954) •

(3) The (State) Government may also by order direct that all or any of the provisions of part III shall not apply to such hostel or institution or such class of hostels or institutions, subject to such terms and conditions, if any, as may be specified in the order.

(4)(a) The Expression "premises belonging to Government or & local authority" in sub-section (1) shall, notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a court, not include a building erected on any land held by any person from the 'Government or a local authority under an agreement, lease or other grant, although having regard to the provisions of such agreement, lease or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be; and

(b) Notwithstanding contained in Section anything¹⁵ such person shall be entitled to create & tenancy in respect of such building or part thereof whether before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959 (Bom. Ord. II of 1959).”

20. Thus, it becomes abundantly clear that when the appellants instituted an application under Section 11(3) of the Rent Act seeking fixation of standard rent, the very provisions of the Rent Act had ceased to apply to the premises in question. The statutory remedy invoked was, therefore, not available to the appellants in law. The institution of such proceedings, in the absence of a subsisting statutory foundation, amounts to a misconceived invocation of jurisdiction, resulting in an exercise in futility and an unwarranted consumption of judicial time, making it an abuse of process of law. Thus, from all counts makes standard rent application as irreparable suit, which discerned to be nipped at threshold.

21. In this context, it would be apposite to refer to the decision of the Hon'ble Supreme Court in **Shipping Corporation of India Ltd. v. Machado Brothers and Others, (2004) 11 SCC 168**, wherein the Court, invoking the doctrine of *ex debito justitiae*, emphasised that Courts are under an inherent obligation to act in furtherance of justice and to prevent abuse of process. It was observed that, in appropriate cases, the Court is duty-bound to bring an infructuous or untenable litigation to an end by resorting to its inherent powers under Section 151 of the Code. The relevant observations in paragraphs 21 to 25 fortify the principle that judicial process ought not to be permitted to degenerate into a tool for perpetuating untenable claims or flogging a dead horse. Relevant paragraphs reads as under:-

“21. In the instant case, the appellant contends that during the pendency of the first suit, certain subsequent events have taken place which has made the first suit infructuous and in law the said suit cannot be kept pending and continued solely for the purpose of continuing an interim order made in the said suit.

22. While examining this question we will have to consider whether the court can take cognizance of a subsequent event to decide whether the pending suit should be disposed of or kept alive. If so, can a defendant make an application under section 151 CPC for dismissing the pending suit on the ground, the said suit has lost its cause of action. This Court in the case of Pasupuleti Venkateswarlu V/s. The Motor & General Traders has held thus:

"We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is not violated, with a view to promote substantial justice subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

23. In the very same case, this Court quoted with approval a Judgement of the Supreme Court of United States in Patterson v. State of Alabama, wherein it was laid down thus:

"We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the Judgement under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact

or in law, which has supervened since the Judgement was entered."

24. Almost similar is the view taken by this Court in the case of J.M.Biswas V/s. N.K. Bhattacharjee & Ors. wherein this Court held:

"The dispute raised in the case has lost its relevance due to passage of time and subsequent events which have taken place during the pendency of the litigation. In the circumstances, continuing this litigation will be like flogging a dead horse. Such litigation, irrespective of the result, will neither benefit the parties in the litigation nor will serve the interests of the Union."

25. Thus it is clear that by the subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the court to take such action as is necessary in the interest of justice which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application under section 151 of CPC to bring to the notice of the court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not."

22. It is equally apposite to observe that Order VII Rule 11 of the Code stands as a procedural sentinel guarding the portals of civil justice. Its salutary object is to ensure that vexatious, meritless or legally untenable proceedings are interdicted at the threshold. While the provision must indeed be invoked with circumspection and sensitivity towards genuine litigants raising *bona fide* disputes, the Court cannot remain a mute spectator where the litigation is demonstrably devoid of legal substratum. The power must, therefore, be exercised with firmness where the pleadings *ex facie* disclose no enforceable right. To fortify the view, let me take assistance from the well famous judgment of the Hon'ble Apex Court in case of **T. Arivandandam v. T.V. Satyapal (1977) 4 SCC 467**, wherein, in para 5 and 6, the Hon'ble Apex Court held as under:-

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsifs Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful not formal reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits.”

23. In view of the foregoing discussion and the reasons recorded hereinabove, these Second Appeals are found to be bereft of merit and do not give rise to any substantial question of law warranting interference under Section 100 of the Code. The substantial questions of law framed at the time of admission are answered accordingly.

24. Consequently, all the Second Appeals, except Second Appeal No. 80 of 2023 and Second Appeal No. 81 of 2023, stand **dismissed**. Second Appeal No. 80 of 2023 and Second Appeal No. 81 of 2023 are found unworthy of admission and are, therefore, **dismissed** in limine. No order as to costs.

25. Interim relief, if any, stands discontinued forthwith.

26. Record and Proceedings, if any, be transmitted back to the concerned Court below without delay.

27. The Registry is directed to place a copy of this judgment in each of the connected matters.

MANISH MISHRA / SHEKHAR P. BARVE

(J. C. DOSHI,J)